



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

October 15, 2004

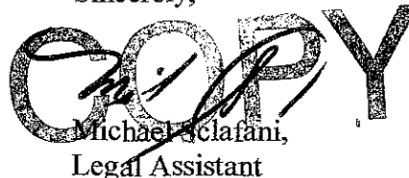
Mr. Claude A. Jeanloz
Yield House Industries, Inc.
Renovator's Old Mill
Millers Falls, MA 01349

Re: Docket No. AF 04-087 – Yield House Industries, Incorporated

Dear Mr. Jeanloz:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Robert R. Scott, Air Resources Division Director, and accepted by Commissioner Michael P. Nolin on October 13, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,


Michael Scialfani,
Legal Assistant

cc: Robert R. Scott, Director, DES Air Resources Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Joseph Ritz, DES ARD
DES Public Information Officer
R. Kurowski, EPA Region I
Board of Selectmen, Town of Conway



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Yield House Industries, Incorporated
71 Hobbs Street
Conway, NH 03818

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 04-087

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division ("Division"), and Yield House Industries, Incorporated, pursuant to RSA 125-C:15, I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord.
2. Yield House Industries, Incorporated ("Yield House") is a corporation operating in the State of New Hampshire having a mailing address of 71 Hobbs Street, Conway, NH 03818.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted N.H. Code of Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15, I-b(b) authorizes DES to impose administrative fines of up to \$2,000 per violation for violations of RSA 125-C and rules adopted pursuant thereto.
3. RSA 125-C:6 authorizes DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner has adopted Env-A 600.
4. RSA 125-C:2,XI defines a stationary source as "any building, structure, facility, or

installation which emits or which may emit any regulated air pollutant”.

5. Yield House manufactured finished wood furniture at its facility in Conway (“the Facility”).

6. Yield House’s operations included the design and manufacture of wood furniture, which was finished with a variety of protective and decorative coatings. These coatings contained volatile organic compounds (“VOCs”), which resulted in emissions to the ambient air. Therefore, Yield House was subject to Env-A 100 *et seq.*

7. Env-A 607.01(g) requires a source to obtain a temporary permit if its actual emissions of VOCs are greater than 10 tons per year.

8. Env-A 607.01(x) requires a source to obtain a temporary permit if it is subject to the rules governing reasonably available control technology (“RACT”) as contained in Env-A 1200.

9. Env-A 1204.25, *Applicability Criteria for the Coating of Wood Furniture, Burial Caskets, and Gunstock*, formerly Env-A 1204.17(a), provides that a source whose wood furniture coating operations have combined theoretical potential emissions during any consecutive 12-month period after December 31, 1989, which equal or exceed 25 tons of VOCs shall be subject to VOC RACT.

10. Env-A 1204.26, formerly Env-A 1204.17(c) and (d), requires sources subject to the rule to comply with the coating limits of 1.8 lb VOC/lb solids as applied for topcoats and 1.9 lb VOC/lb solids as applied for sealers.

11. As an alternative to the coating limits, Env-A 1204.34, formerly Env-A 1204.17(n), allows a source to install an air pollution control device that controls emissions to the same degree as the coating limits.

12. The coatings used by Yield House contained VOCs that exceeded the limits in Env-A 1204.26. To comply with VOC RACT, Yield House installed an Eisenmann Concentrator Wheel and VOC incinerator (“the Device”).

13. On April 17, 1998, DES issued Yield House State Permit to Operate, FP-S-0053 (“the Permit”) for its production of wood furniture.

14. The Permit required that the Device be operated during the spraying operation and limited the Facility emissions to less than 50 tons during any consecutive 12-month period (273 lb/day, on a 30-day rolling average). The Permit also limited HAP emissions to less than 10 tons for any one HAP and less than 25 tons for all HAPs combined during any consecutive 12-month period.

15. Condition VI. A of the Permit required Yield House to direct the exhaust from the stain spray booth, lacquer spray booth, and sealer spray booth to the Device via a permanent total enclosure.
16. On March 26, 2002, DES performed a compliance inspection at the Facility. During the inspection and from subsequent information provided to DES by Yield House, DES determined that the Device was not being operated during spraying as required by the Permit. The periods during which the Device was not operated were from June 6, 2001 to October 9, 2001, and from October 17, 2001 through December 20, 2002.
17. Condition VIII. Malfunction of the Permit required Yield House to notify DES following any failure of air pollution control equipment that resulted in an increase in emissions above any allowable emission limit contained in the Permit.
18. On April 15, 2002, DES received a permit deviation report from Yield House stating that on June 6, 2001, the Device was shut down after being struck by lightning. The lightning strike knocked out the software program that ran the Device. The deviation report further stated that on October 17, 2001, the transformer, which was used to provide power to the Device, had failed and again the Device was shut down.
19. Env-A 1404 requires all stationary sources or devices that emit regulated toxic air pollutants ("RTAPs") into the ambient air to comply with the ambient air limits established in Env-A 1400 by performing a compliance determination by May 8, 2000, using one of the methods specified in Env-A 1406.02 through 1406.05. If the compliance determination demonstrated any exceedance of an ambient air limit ("AAL"), then the source was required to submit a compliance plan with a permit application demonstrating how it will comply with the AAL's prior to May 8, 2001.
20. At the time of the March 26, 2002 inspection, Yield House did not have available for review the results of the compliance demonstration required by Env-A 1400.
21. Env-A 907.01, formerly Env-A 901.05, Env-A 908, and Condition XI of the Permit required Yield House to submit annual emission reports by April 15th.
22. On April 3, 2002, DES received Yield House's calendar year 2000 emission inventory report.
23. On April 15, 2002, DES received Yield House's calendar year 2001 emissions inventory report. The report indicated that VOC emissions from the Facility were 8.08 tons.
24. On January 22, 2003, DES sent Yield House a Letter of Deficiency ("the LOD"). The LOD addressed deficiencies discovered during the March 26, 2002 compliance inspection and subsequent file review.

25. The LOD requested that Yield House submit a plan describing the steps it would take to comply with the Permit, the results of the compliance determination as required by Env-A 1400, the excess emissions reports for calendar years 2001 and 2002, and the calendar year 2002 emission inventory report.
26. On January 28, 2003, the N.H. Small Business Technical Assistance Ombudsman conducted a toxics determination for Yield House. The results indicated that actual air toxic emissions did not exceed the relevant ambient air limits in Env-A 1450.01.
27. Env-A 608.10 provides that a source with an expiring Permit is required to submit an application for a State Permit to Operate at least 90 days prior to the designated expiration date of the Permit.
28. On February 3, 2003, DES received Yield House's application for renewal of the Permit, which expired April 30, 2003. The application included the Facility's calendar year 2002 emissions, which were 5.65 tons.
29. Yield House also informed DES that on December 20, 2002, the Facility's manufacturing operation had closed. Yield House also stated that it would repair the Device prior to resuming operations and requested that DES renew the Permit.
31. On June 25, 2003, DES sent a letter to Yield House requesting additional information so that DES could complete its review of the application.
32. On September 2, 2003, DES sent a letter to Yield House stating that, due to the lack of response to DES's June 25, 2003 letter, DES was discontinuing its review of the permit application.
33. On September 18, 2003, DES received tax returns for five years from Yield House for Yield House and Enfield Industries, Incorporated ("Enfield"), a related entity.
34. On September 29, 2003, DES met with Yield House to discuss the alleged violations. During the meeting, Yield House said that it did not have the funds to pay any fine.
35. DES reviewed the tax returns and other information received from Yield House, using EPA's ABEL model. Based on DES's review, there is less than a 50% probability that Yield House could pay the proposed fine and a 70% probability that it could afford to pay nothing.

IV. ALLEGATIONS

1. Yield House violated Env-A 1204.26 and Condition VI.A of the Permit by failing to operate the Device during the spraying operation.
2. Yield House violated Env-A 911.03 and Condition VIII of the Permit by failing to submit a

Malfunction Report within the timeframe specified by the Permit.

3. Yield House violated Env-A 1204.26 and Condition V. A of the Permit by exceeding the VOC limit of 1.8 lb VOC/lb solids as applied, excluding water and exempt compounds, for topcoats and 1.9 lb VOC/lb solids as applied, excluding water and exempt compounds, for sealers. DES has calculated that Yield House emitted 10 tons of excess VOC emissions during this period.
4. Yield House violated Env-A 1404 by failing to perform a compliance determination using one of the methods specified in Env-A 1406.02 through 1406.05 for its emissions of RTAPs prior to May 8, 2001.
5. Yield House violated Env-A 907.01, Env-A 908, and Condition XI of the Permit by failing to submit to DES the calendar year 2000 annual emission report by April 15, 2001.
6. Yield House violated Env-A 608.10 by failing to submit a permit renewal application within 90 days of expiration of the Permit.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. Pursuant to RSA 125-C, DES has determined the violation identified in Paragraph IV.1 to be a moderate deviation from the requirements with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$601-\$1,250. DES has determined that a fine of \$650 per month for the 19 months that Yield House failed to operate the Device, for a total penalty of \$12,350, is an appropriate penalty for this violation.
2. Pursuant to RSA 125-C, DES has determined the violation identified in Paragraph IV.2 to be major deviation from the requirements with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$851-\$1,500. DES has determined that a fine of \$851 for failing to submit a permit deviation report is an appropriate penalty for this violation.
3. To resolve the allegations identified in Paragraph IV.3, Yield House agrees to purchase and retire 5 tons of ozone season DERs and 5 tons of non-ozone season DERs to offset the excess VOC emissions described herein.
4. Pursuant to RSA 125-C, DES has determined the violation identified in Paragraph IV.4 above to be major deviation from the requirements with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$851-\$1,500. DES is seeking \$851 for this violation.
5. In order to resolve the violations alleged herein, and taking into consideration that Yield House has paid all emission-based fees owed under Env-A 704, that it has closed its manufacturing operation, and that the information submitted by Yield House demonstrates an inability to pay the proposed fine in accordance with the DES Compliance Assurance Response Policy, DES agrees to waive the fines proposed for these violations.

6. Yield House agrees that although it has documented an inability to pay, should Yield House restart operations in New Hampshire after the execution of this Agreement, the company, or its successors or assigns, shall purchase and retire 5 tons of ozone season DERs and 5 tons of non-ozone season DERs as a condition precedent to obtaining an operating permit from DES.

7. By executing this Agreement, Yield House waives its right to a hearing on or any appeal of the administrative fines identified in Paragraphs V.1 through V.4, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction. Yield House shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of Yield House and alleging violations of the New Hampshire Code of Admin. Rules or statutes, or in any proceeding before DES to enforce this Agreement.

8. The effective date of this Administrative Fine by Consent shall be the date on which it has been signed by an authorized representative of Yield House, the Director of the Air Resources Division and the Commissioner of DES.

9. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

Yield House Industries, Incorporated

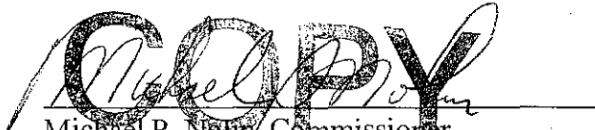
COPY
Duly Authorized

Date: OCT 4, 2004

Department of Environmental Services

COPY
Robert R. Scott, Director
Air Resources Division

Date: Oct 12, 2004


Michael P. Naim, Commissioner
Department of Environmental Services

Date: 10 13 04

cc: R. Scott, Director DES ARD
G. Hamel, Administrator, DES Legal Unit
Public Information Officer, DES PIP Office
R. Kurowski, EPA, Region I
G. Webster, Selectman, Town of Conway
File AFS# 3300300071